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14 Attorney for Defendants, Modesto Energy Limited Partnership, Modesto
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15

16 UNITED STATES DISTRICT COURT
17 FOR THE EASTERN DISTRICT OF CALIFORNIA

18 UNITED STATES OF AMERICA,
19

Plaintiff,

20 v.

21 MODESTO ENERGY LIMITED
PARTNERSHIP, MODESTO
22 ENVIRONMENTAL CORP., ENPOWER
MANAGEMENT CORP., and
23 CMS GENERATION CO.

24 Defendants.)
25
26
27
28

CIVIL NO.:

CONSENT DECREE

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15 Attorneys for Plaintiff, United States of America

16 UNITED STATES DISTRICT COURT

17 FOR THE EASTERN DISTRICT OF CALIFORNIA

18 UNITED STATES OF AMERICA,

19 Plaintiff,

20 v.

21 MODESTO ENERGY LIMITED
22 PARTNERSHIP, MODESTO
23 ENVIRONMENTAL CORP., and ENPOWER
24 MANAGEMENT CORP.,

25 Defendants.

CIVIL NO.:

CONSENT DECREE

26 I. BACKGROUND

27 A. The United States of America ("United States"), on behalf of the
28 Administrator of the United States Coast Guard ("USCG"), filed a complaint in this matter
pursuant to Section 107 of the Comprehensive Environmental Response, Compensation,

1 and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607; Section 311 of the
2 Clean Water Act, as amended ("CWA"), 33 U.S.C. 1321(c); and the Oil Pollution Act of
3 1990, as amended ("OPA"), 33 U.S.C. § 2701 et seq., for the recovery of response costs
4 incurred and to be incurred by the United States, in connection with releases or threatened
5 releases of hazardous substances, pollutants and contaminants arising from the September
6 1999 tire fire that occurred near the Modesto Energy Limited Partnership ("MELP") waste
7 tire-to-energy plant, located at 4401 and 4549 Ingram Creek Road in Westley, California.

8 B. This Consent Decree provides for the Settling Defendants to pay four hundred
9 eighty-two thousand dollars (\$482,000.00) in Past Response Costs to the United States
10 Coast Guard ("USCG") as specified in Section V (Payment of Response Costs) of the
11 Consent Decree.

12 C. The United States and Settling Defendants agree, and this Court by entering
13 this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in
14 good faith, that settlement of this matter will avoid prolonged and complicated litigation
15 between the Parties, and that this Consent Decree is fair, reasonable, and in the public
16 interest.

17 THEREFORE, with the consent of the Parties to this Decree, it is ORDERED,
18 ADJUDGED, AND DECREED:

19 II. JURISDICTION

20 1. This Court has jurisdiction over the subject matter of this action pursuant to
21 28 U.S.C. §§ 1331 and 1345 and 1355, Section 107 of CERCLA, 42 U.S.C. § 9607, Section
22 311(c) of CWA, 33 U.S.C. § 1321(c), and OPA, 33 U.S.C. § 2701 et seq., and also has
23 personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent
24 Decree and the underlying complaint, Settling Defendants waive all objections and defenses
25 that they may have to jurisdiction of the Court or to venue in this District.

26 III. PARTIES BOUND AND BENEFITTED

27 2. This Consent Decree is binding upon and shall inure to the benefit of the
28 United States, and each of its departments, agencies and instrumentalities, and the Settling

1 Defendants, and each of their respective past and present officers, directors, general
2 partners, limited partners, parent companies (specifically limited to United American
3 Energy Corp., a Delaware corporation and former parent company of Modesto
4 Environmental Corp. and UAE Energy Operations Corp.; and Enpower Corp., a California
5 corporation and current parent company of Enpower Management Corp.), subsidiaries,
6 heirs, successors and assigns. Any change in ownership or corporate or other legal status,
7 including but not limited to, any transfer of assets or real or personal property, shall in no
8 way alter the status or responsibilities of Settling Defendants under this Consent Decree.

9 IV. DEFINITIONS

10 3. Unless otherwise expressly provided herein, terms used in this Consent
11 Decree that are defined in CERCLA (42 U.S.C. § 9601), CWA (33 U.S.C. § 1321 or 1362),
12 or OPA (33 U.S.C. § 2701), or in regulations promulgated under each, shall have the
13 meanings assigned to them in each or in such regulations. Whenever terms listed below are
14 used in this Consent Decree or in any appendix attached hereto, the following definitions
15 shall apply:

16 a. "CERCLA" shall mean the Comprehensive Environmental Response,
17 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

18 b. "Consent Decree" shall mean this Consent Decree. In the event of
19 conflict between this Consent Decree and any appendix, the Consent Decree shall control.

20 c. "CWA" shall mean the Clean Water Act of 1977, as amended, 33
21 U.S.C. § 1251 et seq. The Clean Water Act is a 1977 amendment to the Federal Water
22 Pollution Control Act of 1972.

23 d. "Day" shall mean a calendar day. In computing any period of time
24 under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal
25 holiday, the period shall run until the close of business of the next working day.

26 e. "DOJ" shall mean the United States Department of Justice and any
27 successor departments, agencies or instrumentalities of the United States.

28 f. "Effective Date" shall be the effective date of this Consent Decree as

1 provided in Section XV (Lodging and Opportunity for Public Comment).

2 g. "EPA" shall mean the United States Environmental Protection Agency
3 and any successor departments, agencies or instrumentalities of the United States.

4 h. "OPA" shall mean the Oil Pollution Act of 1990, as amended, 33
5 U.S.C. § 2701 et seq.

6 i. "Owner or Operator" shall mean in the case of an onshore facility, any
7 person owning or operating such onshore facility.

8 j. "Paragraph" shall mean a portion of this Consent Decree identified by
9 an Arabic numeral or an upper or lower case letter.

10 k. "Parties" shall mean the United States and Settling Defendants.

11 l. "Past Response Costs" shall mean all costs, including but not limited to
12 direct and indirect costs, that EPA, the USCG, or DOJ on behalf of EPA or the USCG, has
13 paid or incurred in connection with the Westley Tire Fire or the Site through the date of
14 entry of this Consent Decree.

15 m. "Person" shall mean an individual, corporation, partnership,
16 association, state, municipality, commission, or political subdivision of a state, or any
17 interstate body.

18 n. "Plaintiff" shall mean the United States of America.

19 o. "Section" shall mean a portion of this Consent Decree identified by a
20 Roman numeral.

21 p. "Settling Defendants" shall mean Modesto Energy Limited Partnership
22 (a California limited partnership), Modesto Environmental Corp. (a California corporation),
23 and Enpower Management Corp. (a California corporation, formerly known as UAE Energy
24 Operations Corp.).

25 q. "Site" shall mean the Westley Tire Site located at 4401 and 4549
26 Ingram Creek Road, Westley, California.

27 r. "United States" shall mean the United States of America, including all
28 of its departments, agencies and instrumentalities (including but not limited to, USCG and

1 EPA).

2 s. "USCG" shall mean the United States Coast Guard and any successor
3 departments, agencies or instrumentalities of the United States.

4 s. "Westley Tire Fire" shall mean the tire fire that commenced on
5 September 22, 1999, and was extinguished approximately thirty-four days later, near the
6 Modesto Energy Limited Partnership waste tire-to-energy plant at the Site.

7 **V. PAYMENT**

8 4. Settling Defendants' Limited Ability to Pay

9 The United States has reviewed financial information submitted by Settling
10 Defendants and has determined that Settling Defendants have a limited ability to pay Past
11 Response Costs. Based on the financial information submitted, the United States has
12 determined that Settling Defendants can reimburse the USCG the amounts set forth in
13 Paragraph 5 below.

14 5. Payment of Past Response Costs

15 a. Within thirty (30) days of the date of entry of this Consent Decree,
16 Settling Defendants shall pay the sum of FOUR HUNDRED EIGHTY TWO THOUSAND
17 DOLLARS (\$482,000.00) to the USCG.

18 b. The payment specified in Paragraph 5.a. shall be made to the USCG by
19 Electronic Funds Transfer to the U.S. Department of Justice in accordance with instructions
20 to be provided to Settling Defendants, following entry of this Consent Decree, by the
21 Financial Litigation Unit of the U.S. Attorney's Office for the Eastern District of California.
22 Such monies are to be deposited in the Oil Spill Liability Trust Fund. At the time of
23 payment, Settling Defendants shall simultaneously send written notice of payment and a
24 copy of any transmittal documentation (which should reference DOJ case number 90-5-1-1-
25 07881) to the Parties in accordance with Paragraph 20 of this Consent Decree (Notices and
26 Submissions) and to:

United States Coast Guard
Lieutenant Commander S. Moody
National Pollution Funds Center
4200 Wilson Blvd., Suite 1000
Arlington, Virginia 22203

United States Coast Guard
Commander Brian Judge
Office of Claims and Litigation
2100 Second Street, S.W.
Washington, D.C. 20593

VI. FAILURE TO COMPLY WITH CONSENT DECREE

6. Interest on Late Payments. If any Settling Defendant fails to make any payment under Paragraph 5 (Payment of Past Response Costs) by the required due date, interest shall accrue on the unpaid balance from the date of entry of this Consent Decree through the date of payment, at the rate specified in 28 U.S.C. § 1961(a) and (b) for a money judgment.

VII. COVENANT NOT TO SUE BY PLAINTIFF

7. Covenant Not to Sue by United States. Except as specifically provided in Section VIII (Reservations of Rights by United States), the United States covenants not to sue or to take any administrative action against any Settling Defendants, or any of their respective past or present officers, directors, general partners, limited partners, parent companies (specifically limited to United American Energy Corp. and Enpower Corp.), subsidiaries, heirs, successors or assigns, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Section 1002 of OPA, 33 U.S.C. § 2702, or Section 311(f) of CWA, 33 U.S.C. § 1321(f), for recovery of any Past Response Costs. This covenant not to sue shall take effect upon receipt by USCG of all payments required by Section V, Paragraph 5 (Payment of Past Response Costs). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants (and their respective past and present officers, directors, general partners, limited partners, parent companies (specifically limited to United American Energy Corp. and Enpower Corp.), subsidiaries, heirs, successors and assigns), and does not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY UNITED STATES

8. The United States reserves, and this Consent Decree is without prejudice to,

1 all rights against Settling Defendants with respect to all matters not expressly included
2 within the Covenant Not to Sue by Plaintiff in Paragraph 7 (Covenant Not to Sue by
3 Plaintiff). Notwithstanding any other provision of this Consent Decree, the United States
4 reserves all rights against Settling Defendants with respect to:

5 a. claims based on a failure by Settling Defendants to meet a requirement
6 of this Consent Decree;

7 b. liability for costs incurred or to be incurred by the United States that
8 are not within the definition of Past Response Costs;

9 c. liability for damages for injury to, destruction of, or loss of natural
10 resources, and for the costs of any natural resource damage assessments;

11 d. criminal liability; and

12 e. liability arising from any future release of a hazardous substance,
13 pollutant or contaminant at the Site by Settling Defendants.

14 9. Notwithstanding any other provision of this Consent Decree, the United States
15 reserves, and this Consent Decree is without prejudice to, the right to re-institute or reopen
16 this action, or to commence a new action seeking relief other than as provided in this
17 Consent Decree, if the financial information provided by Settling Defendants is false or, in a
18 material respect, inaccurate.

19 10. Further notwithstanding any other provision of this Consent Decree, the
20 United States retains all authority and reserves all rights to take any and all response actions
21 authorized by law.

22 IX. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

23 11. Settling Defendants covenant not to sue and agree not to assert any claims or
24 causes of action against the United States, or its contractors or employees, with respect to
25 Past Response Costs or this Consent Decree, including but not limited to:

26 a. any direct or indirect claim for reimbursement from the Hazardous
27 Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42
28 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

1 b. any claim arising out of the response actions taken at the Site with
2 respect to the Westley Tire Fire for which the Past Response Costs were incurred, including
3 any claim under the United States Constitution, the Constitution of the State of California,
4 the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as
5 amended, or at common law;

6 c. any claim against the United States pursuant to Sections 107 and 113
7 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs incurred in
8 connection with the Westley Tire Fire;

9 d. any claim against the United States under the CWA or OPA with
10 respect to the Westley Tire Fire, including but not limited to, any direct or indirect claim for
11 reimbursement from the Spill Fund established pursuant to OPA, or under any provision of
12 law, or for events arising out of removal activities in connection with the Westley Tire Fire.

13 12. Nothing in this Consent Decree shall be deemed to constitute approval or
14 preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. §
15 9611, or 40 C.F.R. 300.700(d).

16 **X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

17 13. Nothing in this Consent Decree shall be construed to create any rights in, or
18 grant any cause of action to, any person not a party to this Consent Decree. The Parties
19 expressly reserve any and all rights (including, but not limited to, any right to contribution),
20 defenses, claims, demands, and causes of action that they may have with respect to any
21 matter, transaction, or occurrence relating in any way to the Site against any person not a
22 party hereto.

23 14. The Parties agree, and by entering this Consent Decree this Court finds, that
24 Settling Defendants (and each of their respective past and present officers, directors, general
25 partners, limited partners, parent companies (specifically limited to United American
26 Energy Corp. and Enpower Corp.), subsidiaries, heirs, successors and assigns) are entitled,
27 as of the date of entry of this Consent Decree, to protection from contribution actions or
28 claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), regarding

1 "matters addressed" in this Consent Decree. The "matters addressed" in this Consent
2 Decree are Past Response Costs.

3 15. Each Settling Defendant agrees that, with respect to any suit or claim for
4 contribution brought by it for matters related to this Consent Decree, it will notify USCG
5 and DOJ in writing no later than sixty (60) days prior to the initiation of such suit or claim.
6 Each Settling Defendant also agrees that, with respect to any suit or claim for contribution
7 brought against it for matters related to this Consent Decree, it will notify USCG and DOJ
8 in writing within ten (10) days of service of the complaint or claim upon it. In addition,
9 each Settling Defendant shall notify USCG and DOJ within ten (10) days of service or
10 receipt of any Motion for Summary Judgment, and within ten (10) days of receipt of any
11 order from a court setting a case for trial, for matters related to this Consent Decree.

12 16. In any subsequent administrative or judicial proceeding initiated by the United
13 States for injunctive relief, recovery of response costs, or other relief relating to the Site,
14 Settling Defendants shall not assert, and may not maintain, any defense or claim based upon
15 the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or
16 other defenses based upon any contention that the claims raised by the United States in the
17 subsequent proceeding were or should have been brought in the instant case; provided,
18 however, that nothing in this Paragraph affects the enforceability of the Covenant Not to
19 Sue by Plaintiff set forth in Section VII (Covenant Not to Sue by Plaintiff).

20 **XI. RETENTION OF RECORDS**

21 17. Until two (2) years after the Effective Date of this Consent Decree, each
22 Settling Defendant shall preserve and retain all records, reports, or information (hereinafter
23 referred to as "records") now in its possession or control, or which come into its possession
24 or control, that relate to response actions taken with respect to the Westley Tire Fire or the
25 liability of any person under CERCLA with respect to the Westley Tire Fire, regardless of
26 any corporate retention policy to the contrary.

27 18. After the conclusion of the two (2) year document retention period in the
28 preceding Paragraph, Settling Defendants shall notify USCG and DOJ at least ninety (90)

1 days prior to the destruction of any such records, and, upon request by USCG or DOJ prior
2 to expiration of that 90-day period, Settling Defendants shall deliver any such records to
3 USCG. Settling Defendants may assert that certain records are privileged under the
4 attorney-client privilege or any other privilege recognized by federal law. If Settling
5 Defendants assert such a privilege, they shall provide Plaintiff with the following: 1) the
6 title of the record; 2) the date of the record; 3) the name, title, affiliation (e.g., company or
7 firm), and address of the author of the record; 4) the name and title of each addressee and
8 recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a
9 claim of privilege applies only to a portion of a record, the record shall be provided to
10 Plaintiff in redacted form to mask the privileged information only. Settling Defendants
11 shall retain all records that they claim to be privileged until the United States has had a
12 reasonable opportunity to dispute the privilege claim and any such dispute has been
13 resolved in the Settling Defendants' favor. However, no records created or generated
14 pursuant to the requirements of this Consent Decree shall be withheld on the grounds that
15 they are privileged.

16 19. Each Settling Defendant hereby certifies individually that, to the best of its
17 knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded,
18 destroyed or otherwise disposed of any records, reports, or information relating to its
19 potential liability regarding the Westley Tire Fire since notification of potential liability by
20 the United States or the State or the filing of suit against it regarding the Westley Tire Fire,
21 and that it has fully complied with any and all USCG requests for information pursuant to
22 Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section
23 3007 of RCRA, 42 U.S.C. § 6972.

24 XII. NOTICES AND SUBMISSIONS

25 20. Whenever, under the terms of this Consent Decree, notice is required to be
26 given or a document is required to be sent by one party to another, it shall be directed to the
27 individuals at the addresses specified below, unless those individuals or their successors
28 give notice of a change to the other Parties in writing. Written notice as specified herein

1 shall constitute complete satisfaction of any written notice requirement of the Consent
2 Decree with respect to the United States, USCG, DOJ, and Settling Defendants,
3 respectively.

4 As to DOJ:

5 Chief, Environmental Enforcement Section
6 Environment and Natural Resources Division
7 U.S. Department of Justice
8 Post Office Box 7611
9 Ben Franklin Station
10 Washington, D.C. 20044
11 DJ # 90-11-5-1-07881

12 Angela O'Connell, Senior Counsel
13 Environmental Enforcement Section
14 U.S. Department of Justice
15 301 Howard Street, Suite 1050
16 San Francisco, California 94105
17 DJ # 90-5-1-1-07881

18 As to USCG:

19 Lieutenant Commander Sanders Moody
20 National Pollution Funds Center
21 Ballston Common Office Building, Suite 1000
22 4200 Wilson Boulevard
23 Arlington, Virginia 22203

24 As to MELP, MEC and Enpower:

25 Edward Tomeo
26 Enpower Management Corp.
27 2420 Camino Ramon
28 Suite 101
San Ramon, CA 94583

XIII. RETENTION OF JURISDICTION

21. This Court shall retain jurisdiction over this matter for the purpose of
interpreting and enforcing the terms of this Consent Decree.

XIV. INTEGRATION

22. This Consent Decree constitutes the final, complete and exclusive agreement

1 and understanding among the Parties with respect to the settlement embodied in this
2 Consent Decree. The Parties acknowledge that there are no representations, agreements or
3 understandings relating to the settlement other than those expressly contained in this
4 Consent Decree.

5 **XV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

6 23. This Consent Decree shall be lodged with the Court for a period of not less
7 than thirty (30) days for public notice and comment. The United States reserves the right to
8 withdraw or withhold its consent if the comments regarding the Consent Decree disclose
9 facts or considerations that indicate that this Consent Decree is inappropriate, improper, or
10 inadequate. Settling Defendants consent to the entry of this Consent Decree without further
11 notice. This Consent Decree shall be effective on the date it is approved and entered by the
12 Court.

13 24. If for any reason this Court should decline to approve this Consent Decree in
14 the form presented, this agreement is voidable at the sole discretion of any Party hereto and
15 the terms of the agreement may not be used as evidence in any litigation between the
16 Parties.

17 **XVI. SIGNATORIES/SERVICE**

18 25. Each undersigned representative of a Settling Defendant to this Consent
19 Decree and the Assistant Attorney General for the Environment and Natural Resources
20 Division of the United States Department of Justice certifies that he or she is authorized to
21 enter into the terms and conditions of this Consent Decree and to execute and bind legally
22 such Party to this document.

23 26. Each Settling Defendant hereby agrees not to oppose entry of this Consent
24 Decree by this Court or to challenge any provision of this Consent Decree, unless the
25 United States has notified Settling Defendants in writing that it no longer supports entry of
26 this Consent Decree. Moreover, each Settling Defendant hereby agrees not to oppose entry
27 of, or to challenge any provisions of, any other consent decree relating to the Westley Tire
28 Site lodged with the Court simultaneously with this Consent Decree, unless the United

1 States has notified Settling Defendants in writing that it no longer supports entry of this
2 Consent Decree.

3 27. Each Settling Defendant shall identify, on the attached signature page, the
4 name and address of an agent who is authorized to accept service of process by mail on
5 behalf of that Party with respect to all matters arising under or relating to this Consent
6 Decree. Settling Defendants hereby agree to accept service in that manner and to waive
7 the formal service requirements set forth in Rule 4 of the Federal Rules of Civil
8 Procedure and any applicable local rules of this Court, including but not limited to,
9 service of a summons. The Parties agree that Settling Defendants need not file an answer
10 to the complaint in this action unless or until the Court expressly declines to enter this
11 Consent Decree. The Settling Defendants, however, deny all material allegations of the
12 complaint.

13 **XVII. FINAL JUDGMENT**

14 28. Upon approval and entry of this Consent Decree by the Court, this Consent
15 Decree shall constitute the final judgment between and among the United States and the Settling
16 Defendants. The Court finds that there is no just reason for delay and therefore enters this
17 judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

18
19 SO ORDERED THIS ____ DAY OF _____, 20__.

20
21
22
23 _____
24 United States District Judge
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1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United
2 States v. Modesto Energy Limited Partnership, Modesto Environmental Corp., Enpower
3 Management Corp., and CMS Generations Co., Civil Action No. _____, relating to the
4 Westley Superfund Site.

5
6
7 FOR THE UNITED STATES OF AMERICA

8
9 Date: 5.11.04

10 THOMAS L. SANSONETTI
11 Assistant Attorney General
12 Environment & Natural Resources Division
13 Environmental Enforcement Section
14 U.S. Department of Justice
15 Washington, D.C. 20530

16 ANGELA O'CONNELL
17 Senior Counsel
18 Environmental Enforcement Section
19 Environment and Natural Resources Division
20 U.S. Department of Justice
21 P.O. Box 7611
22 Washington, DC 20044-7611
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THE UNDERSIGNED PARTY enters into this Consent Decree, in the matter
of United States v. Modesto Energy Limited Partnership, Modesto
Environmental Corp. and Enpower Management Corp., Civil Action No.
_____, relating to the Westley Tire Site.

6

7

For the United States Coast Guard

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10

Commander Brian Judge
Office of Claims and Litigation
U.S. Coast Guard
2100 2nd Street, SW
Washington DC 20593-0001

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Lt. Commander Sanders Moody
Legal Counsel
U.S. Coast Guard
National Pollution Funds Center
4200 Wilson Blvd., Suite 1000
Arlington VA 22203-1804

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23

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1 THE UNDERSIGNED PARTIES enter into this Consent in the matter of United
2 States v. Modesto Energy Limited Partnership, Modesto Environmental Corp., and Enpower
3 Management Corp., Civil Action No. _____, relating to the Westley Tire Site.

4 FOR DEFENDANT MODESTO ENERGY
5 LIMITED PARTNERSHIP

6
7 Date: Dec 23, 2003

By: Modesto Environmental Corp., General
Partner

9
10 By: _____
Edward W. Tomeo, President & CEO

11 2420 Camino Ramon
12 Suite 101
13 San Ramon, CA 94583

14
15 FOR DEFENDANT MODESTO
16 ENVIRONMENTAL CORP.

17
18 Date: Dec 23, 2003

By: _____
Edward W. Tomeo, President & CEO

19 2420 Camino Ramon
20 Suite 101
21 San Ramon, CA 94583

22 FOR DEFENDANT ENPOWER
23 MANAGEMENT CORP.

24
25 Date: Dec 23, 2003

By: _____
Edward W. Tomeo, President & CEO

26 2420 Camino Ramon
27 Suite 101
28 San Ramon, CA 94583